

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL AT KAMPALA
APPLICATION NO.104 OF 2024

MOUNTAIN BEVERAGES LIMITEDAPPLICANT

VERSUS

UGANDA REVENUE AUTHORITYRESPONDENT

BEFORE: MS. CRYSTAL KABAJWARA, MR. SIRAJI ALI, MS. STELLA NYAPENDI

RULING

This ruling is respect of an application challenging a penalty for failure to affix a digital tax stamp on goods contrary to Section 21 of the Tax Procedure Code Act (TPCA).

1. Background Facts

The Applicant is in the business of manufacturing and supplying food, beverages and related products. On 23 February 2024, the Respondent issued the Applicant with a penalty amounting to Shs. 50,000,000 for failure to affix a tax stamp on its bottled water. The Applicant objected to the above statement on grounds that all bottles are affixed with digital tax stamps before they leave the Applicant's premises.

2. Issues for determination

The issue for determination is whether the Applicant is liable to pay the penal tax.

3. Representation

The Applicant was represented by Ms. Fatuma Ramathan Nabulya while the Respondent was represented by Mr. George Ssenyomo.

Mr. Jeremy Kasule the Managing Director of the Applicant was the Applicant's sole witness (AW1). He stated that on 20 February 2024, the Respondent's officials claimed that they conducted a physical search at a certain shop called "Pick Yo Choice Supermarket in Bweyogerere, and purportedly seized 2 (out of 20) unstamped water

bottles manufactured by the Applicant. The Applicant was absent during the alleged search and seizure and was only informed about it in the morning of 23 February 2024 by the Respondent's officer. On the same day, the Respondent issued the Applicant a penalty assessment amounting to Shs. 50,000,000 for failure to affix a tax stamp on prescribed goods locally produced

AW1 also testified that the Applicant applied for a penalty reversal vide Form DT-2018 acknowledgment Number CR012401748915 with the reason that the tax stamps were fixed on all the bottles at the point of exiting the factory.

During cross examination, AW1 confirmed that the 2 bottles were not manufactured by the Applicant since they activated the stamp, place it on the bottle for delivery and ensure that all requirements are placed on the product. He stated that he called the manager of the supermarket and told him about the delivery made which he acknowledged and issued a tax invoice. He further stated that it is not his responsibility to follow up with his customers on how they maintain products with digital stamps.

Mr. John Nabembezi, an officer in the Kampala Metro Office under Domestic Taxes Department was the Respondent's sole witness (RW1). He stated that the Respondent's Digital Tax Stamps team held engagements with AW1 who acknowledged that the bottle packaging in the Respondent's possession belonged to the Applicant but that he did not know how and why the stamps were removed.

During cross examination, RW1 confirmed that 2 bottles out of the 20 had not been affixed stamp stamps and that the affixing of stamps happens at the last point of the production line. He also confirmed that if a consumer or a non –manufacturer was found with unstamped products, the person found with unstamped goods will be held liable. RW1 testified that Pick Yo Choice Supermarket was not penalized for possessing unstamped products, but the Applicant company was.

RW1 also confirmed that counterfeit and original products can appear the same at face value.

4. Submissions of the Applicant

The Applicant submitted that no water bottles left the Applicant's premises without a tax stamp and without paying the corresponding excise duty. This is in compliance with Section 20 of the TPCA which provides thus:

- (1) *"A person dealing in goods whether locally manufactured or imported shall affix a tax stamp on any goods locally manufactured or imported as prescribed by the Minister*
- (2) *The Minister shall prescribe, by Statutory Instrument, the locally manufactured or imported goods on which tax stamps shall be affixed."*

The Applicant in addition submitted that Regulation 5(3)(a) of the Tax Procedures Code (Tax Stamps) Regulations 2018 (Tax Stamps Regulation) provides that:

"The tax stamps shall be affixed -in the case of locally manufactured goods in the production facility immediately after packaging ..."

The Applicant submitted that failure to comply with the above attracts a penalty under Section 21(1) of the TPCA which provides:

"A taxpayer who fails to affix a tax stamp on goods prescribed under Section 20(3) or to activate tax stamps is liable to pay a penal tax equivalent to double the tax due on goods or 2500 currency points, whichever is higher."

The Applicant submitted that the above statutory provisions impose an obligation on a manufacturer of mineral water to affix tax stamps on their products. The Applicant duly affixed tax stamps on its goods at the production facility immediately after packaging in accordance with Regulation 5(3)(a) of the Tax Stamps Regulations.

The Applicant submitted that in support of the assertion that the goods with missing stamps were not seized from the Applicant's premises to warrant a penalty under Section 21 of the TPCA, the Applicant's witness, testified that the Respondent did not seize any unstamped water bottles at, in or near the Applicant's factory at Plot 12-Superior Complex, Johnson Street in Arua Park.

The Applicant submitted that it has no responsibility over its goods affixed with tax stamps after they exit the factory premises. This is because under Regulation 18 of the Tax Stamps Regulations, it is provided that:

"A manufacturer, importer, distributor, retailer or any other person involved in the supply chain of prescribed goods shall verify and authenticate the tax stamps and prescribed goods before admitting them in their premises or in any way handling the goods."

The Applicant further submitted that upon failure to comply with the foregoing regulation, Section 21(3) of the TPCA imposes a penalty on any person found in possession of unstamped goods by providing that:

“A person found in possession of goods prescribed under Section 20(3) on which a tax stamp is not affixed, is liable to pay a penal tax equivalent to double the tax due on the goods or 2500 currency points whichever is higher.”

The Applicant further submitted that a holistic interpretation of Section 21(3) of the TPCA and Regulation 18 of the Tax Stamps Regulations shows that upon the goods exiting the Applicant's premises, the duty to ensure that the tax stamps affixed remained intact shifted to Pick Yo Choice Supermarket which was now in possession of the goods. This is in line with Section 21(3) of the TPCA which imposes a penal tax on someone and not the manufacturer, found with goods not bearing tax stamps.

The Applicant submitted that the manufacturer's duty to ensure that their goods have stamps affixed ends upon the goods exiting their premises. This is because Section 21(1) of the TPCA, which imposes a penal tax for failure to affix tax stamps, is qualified by Regulation 5(3) (a) of the Tax Stamps Regulations which requires that the manufacturer affixes the tax stamps before goods leave their premises. The law does not place any liability on the manufacturer beyond their production facility.

The Applicant in addition submitted that the two 18- litre jumbo water bottles, which are the subject of the penal tax, were not seized from the Applicant's premises but rather from Pick Yo Choice Supermarket, and any omissions or commissions with respect to compliance with affixation of tax stamps cannot, and should not be visited on the Applicant.

The Applicant submitted that it paid the taxes due on all goods on which tax stamps had been affixed. This is evidenced by the Applicant's tax Invoice and Local Excise Duty Return Form (AEX 5) indicating the seller's details as the Applicant, the buyer's details as Pick Yo Choice supermarket, the quantity of goods as 20 water bottles as well as the corresponding tax paid.

The Applicant submitted that during the cross examination, RW1 testified that the Respondent's decision to penalize the Applicant for products found at Pick Yo Choice Supermarket -an enterprise not connected to the Applicant was because various

unstamped goods from other manufacturers were found at the supermarket and a penal tax for all the violations would force the supermarket out of business. Thus, the Respondent concluded that the Applicant, a taxpayer larger than the supermarket - should bear the penalty of unstamped goods seized outside its premises. He further testified that the reason for imposing the penal tax on the Applicant was because the Respondent thought that such a penalty would bankrupt Pick Yo Choice supermarket where the unstamped goods were found.

The Applicant submitted that the Respondent assessed them out of convenience and requested the Tribunal to find the above admission confirming that the assessed penalty was unlawful.

The Applicant relied on the case of ***Keroche Industries Limited v Kenya Revenue Authority & 5 Others Misc. Civil Application No. 743 of 2006***, where the Applicant challenged the Respondent's assessment of a penal tax against its wine products, the Kenyan High Court Held:

".... It has been designated as a 'great rule' in the construction of fiscal law that they are not to be extended by any laboured construction but that you must adhere to the strict rule of interpretation ...A penalty moreover must be imposed by clear words. The words of statute shall be restrained for the benefit of him against whom the penalty is inflicted and the language of the statute must be strictly looked at in order to see whether the person against whom a penalty is sought to be enforced has committed an offence to do with it ... that a penal law ought to be construed strictly is not only sought one, but the only consistent with our free institutions."

In ***Partington v Attorney General; [1869] LR4 HL***, it was held that:

"As I understand the principle of fiscal legislation it is this, if the person sought comes within the letter of the law, he must be taxed however great the hardship may appear to the judicial mind to be. On the other hand, if the crown seeking to recover the tax cannot bring the subject within the letter of the law the subject is free however apparently within the spirit of the law the case ought otherwise to appear to be ..."

The Applicant submitted that the above authorities highlight the age -old rule that taxes and their corresponding penalties are a creature of statute and thus taxes can never and should never be imposed through pity. The supermarket 's possible failure to pay

the penal tax, once imposed should not have been a basis upon which the Respondent penalized the Applicant.

The Applicant submitted that during cross -examination, the Respondent 's witness, Mr. John Nabembezi confirmed that the goods were not seized from the Applicant's premises and that the Respondent had not visited the Applicant's premises.

5. Submissions of the Respondent

The Respondent submitted that Section 20(1) of the Tax Procedure Code Act Cap 343 makes it mandatory for a manufacturer of locally manufactured goods to fix a stamp. It provides that;

"A person dealing in goods whether locally manufactured or imported shall fix a tax stamp on any goods locally manufactured or as imported as may be prescribed by the Minister in the subsection 3."

The Respondent submitted that the use of the word "SHALL" in tax matters is couched in mandatory terms. In the High Court case of **Kampala Nissan V URA (High Court Civil Appeal No.07 of 2009)** Justice Madrama as he then was held that:

*"I must add that what Parliament Directs in mandatory language by using the words **SHALL** in a tax law should generally be obeyed."*

The Respondent submitted that Section 21(1) of the Tax Procedure Code Act Cap 343 provides for the penalty for failure to affix a tax stamp. It provides that;

"A taxpayer who fails to affix a tax stamp on goods prescribed under Section 20(3) or to activate tax stamps is liable to pay a penal tax equivalent to double the tax due on goods or fifty million shillings whichever is higher."

The Respondent relied on Regulation 3(1) of the Tax Procedure (Tax Stamps) Regulations 2018:

"Every package of prescribed goods manufactured in or imported into Uganda shall be affixed with a tax stamp."

The Respondent further relied on Regulations 3(3)a of the Tax Procedure (Tax Stamps) Regulations which provide for the affixing of stamps on locally manufactured goods in the production facility immediately after packaging.

The Respondent submitted that the Applicant's product was found at Pick Yo Choice Supermarket by the Respondent's officers (see AXE1) and when AW1 was asked before the issuance of the assessment whether the said products were for the Applicant, he replied in the affirmative.

The Respondent submitted that the goods in question are manufactured by the Applicant and a tax stamp is only fixed by the Applicant. The fact that the goods do not have digital stamps leads to no other conclusion other than the fact that the Applicant is liable to pay the penal tax.

The Respondent concluded by stating that the Applicant has failed to discharge the burden of proving that it is not liable to pay the tax as assessed.

6. Submissions of the Applicant in Rejoinder

In rejoinder the Applicant submitted that it is trite that where a taxpayer discharges their burden of proof, the burden shifts to the Respondent to controvert it if necessary. The Applicant has provided clear evidence that none of its products left the premises unstamped.

Therefore, the burden of proof shifted to the Respondent who must produce any evidence to the contrary to justify their assessment. As general rule the burden of proof relates only to facts and is inapplicable to legal arguments. Questions of law are decided without regard to any presumption and the Applicant only needs to demonstrate that the decision should not have been made or should have been made differently.

7. The determination by the Tribunal

Having read submissions of both parties, this is the decision of the Tribunal

The Applicant is in the business of manufacturing and supplying food, beverages and related products. On 23 February 2024, the Respondent issued the Applicant with a penalty amounting to Shs. 50,000,000 for failure to affix a tax stamp on its bottled water. The Applicant objected to the above statement on grounds that all bottles are affixed with tax stamps before they leave the Applicant's premises.

The offending goods were found by the Respondent in Pick Yo Choice Supermarket, a retailer of the Applicant's products. Consequently, the Respondent penalised the Applicant for failing to affix a stamp to their goods.

Section 21 of the Tax Procedure Code Act imposes penal tax for failure to affix stamps.

Sub-section (i) provides as follows:

"A taxpayer who fails to affix a tax stamp on goods...or to activate tax stamps is liable to pay a penal tax equivalent to double the tax due on the goods or two thousand five hundred currency points, whichever is higher."

For a person to be liable to the above penal tax, they must be shown to have failed to affix a tax stamp on the goods.

While it is not in dispute that the goods did not bear the requisite stamps, there was no evidence to the effect that the Applicant failed to affix the requisite stamp as required by the law.

For a penal tax to apply, there must be certainty of the event or offence giving rise to the penal tax. This is because a penalty must be imposed by clear words (***Keroche Industries Limited v Kenya Revenue Authority, supra***). In the present case, the clear words that impose the penalty are:

"A taxpayer who fails to affix a tax stamp on goods..."

The Applicant's witnesses testified that no water bottles left the Applicant's premises without a tax stamp or payment of the corresponding excise duty. He further argued that the Applicant exercised all reasonable care and ensured that tax stamps were fixed on the goods before exit of its premises. During his re-examination, he testified that the Applicant activated the paper tax stamps after manufacturing and there was a person at the Applicant's premises whose duty was to ensure that the bottles being distributed bore tax stamps. The Applicant also demonstrated that the said bottles were declared for excise duty purposes and the corresponding returns were filed.

In our view, the mere finding of a good without a stamp is not conclusive evidence of a failure on the part of the manufacturer to affix the stamp. This is because there are several other reasons why a good that has been affixed with a stamp could have a missing stamp for example, poor product handling during distribution, poor storage or

maintenance could all lead to the degradation of an affixed stamp. In addition, the possibility of counterfeit products cannot be ruled out.

In ***Kayinda and anor v The Commissioner (Uganda Revenue Authority) and anor (Civil Suit 51 of 2017) 2021UGComm136*** court opined:

“a fact can be inferred from circumstantial evidence, so long as it is the only reasonable inference in order to satisfy the “more likely than not “evidentiary standard. If there is another conclusion which is also reasonably open from that evidence, then the fact is not proved. The finding can be sustained only when it can be said as a matter of fact that no other reasonable conclusion is legally deducible from the evidence and that any other finding would be so lacking in evidentiary support.”

Therefore, under the circumstances, the absence of the stamp on the goods is not conclusive proof that the taxpayer failed to affix the said stamp.

In addition, at the hearing, the Applicant demonstrated that the goods that were sold to Pick Yo Choice Supermarket were declared in the relevant excise duty return and the excise duty paid accordingly. This is evidenced by the return exhibited as AEX 5 of the Joint Trial Bundle. The return shows that the Applicant supplied 20 jumbo bottles of 18 litres each to Pick Yo Choice Supermarket. This corroborates the Respondents penalty reversal report as exhibited as REX 1 of the Joint Trial Bundle, which indicates that the Applicant supplied 20 (twenty) bottles to Pick Yo Choice Supermarket.

One of primary purposes of digital tax stamps is to verify the authenticity and tax compliance of a product. In the present case, the Applicant demonstrated that they accounted for the requisite excise duty payable on the bottles supplied to Pick Yo Choice Supermarket. In the grand scheme of things, these are not the actions of a person looking to bypass the tax system.

Therefore, it is reasonable to conclude that the Applicant has discharged the burden of proof and based on the evidence, it is more likely than not that the Applicant affixed the said stamps to the goods.

It is also worth noting that the offending goods were found in possession of Pick Yo Choice Supermarket. However, the Respondent chose to penalise the Applicant and not the retailer.

Section 21 (3) of the TPCA provides:

"Any person who is found in possession of goods prescribed under section 20 (3) is liable to penal tax equivalent to double the tax due on the goods or two thousand five hundred currency points, whichever is higher."

The above provision imposes a duty on persons such as retailers to ensure that all goods in their possession bear the necessary digital stamps. Therefore, from the reading of the above provision, the retailer having been found in possession of the goods ought to have been penalised for having failed to carry out their duty.

During cross examination, when asked about the criteria applied by the Respondent in determining who to penalise, the Respondent's witness testified that it is difficult for possessors such as Pick Yo Choice Supermarket to bear the liability especially if they were to be penalized for each unstamped product they possess.

This shows that the decision to penalise the Applicant was based on convenient choice and not fairness.

In the circumstances, the application is hereby allowed. The Tribunal makes the following orders:

- (i) The penalty of Shs. 50,000,000 is hereby set aside.
- (ii) Costs are hereby awarded to the Applicant.

Dated at Kampala this 11th day of April 2025.


CRYSTAL KABAJWARA
CHAIRPERSON


SIRAJI ALI
MEMBER


STELLA NYAPENDI
MEMBER